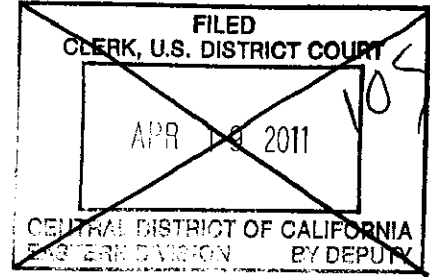
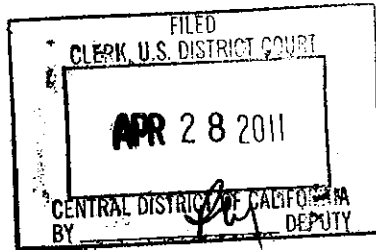


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STOVALL, CHARLES M.
mike@mikestovall.com
601 N. KIRBY ST. #527
HEMET, CA 92545
760-518-5225
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CENTRAL DIST. OF CALIF.
RIVERSIDE

UNDER SEAL



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CV 11-03192 GHK (Fmax)

UNITED STATES, ex rel.
CHARLES M. STOVALL et al.,

Plaintiff,

vs.

MCCROMETER, INC.,
DANAHER INC.,

AND DOES 1 THROUGH 10,
INCLUSIVE,

Defendants.

COMPLAINT FOR VIOLATIONS OF

FEDERAL FALSE CLAIMS ACT,
(31 U.S.C. §§ 3729 et. seq.)

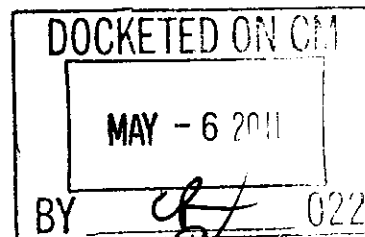
CALIFORNIA FALSE CLAIMS ACT,
(Cal. Gov't Code §§ 12650 et. seq.)

**FILED [REDACTED] AND UNDER SEAL
DEMAND FOR JURY TRIAL**

I. INTRODUCTION AND SUMMARY OF ALLEGATIONS

1. This is an action to recover damages, civil penalties and
other equitable relief on behalf of

A. United States of America arising from Defendants selling
knowingly defective and fraudulent large water meters to



③

1 Federally funded projects and from a scheme¹ to facilitate fraud
2 claims by Defendants' Clients and their employees, agents,
3 and/or their contractors to avoid, conceal, or decrease
4 Defendants' Clients obligation to pay or transmit money to the
5 Government of the United States of America in violation of 31
6 U.S.C. section 3729, et seq. popularly known as the False Claims
7 Act (the "Act") which provides that the United States District
8 Courts shall have exclusive jurisdiction of action brought under
9 that Act; and
10

11 **B.** California, for violations of the California False Claims
12 Act, Cal. Govt. Code section 12650 et seq., and in particular
13 sections 12651 (a) (3) (7) and (8); and
14

15 **C.** Relator, Charles M. Stovall, arising from Defendants
16 threatening, harassing, discharging, or otherwise discriminating
17 against Relator in response to Relator discovery and reporting
18 of the aforesaid false claims and false claims scheme. Relator,
19 acting on behalf of and in the name of the United States for
20 Counts I-IV, acting on behalf of California for Count V, and
21 acting on his own behalf for Counts VI & VII brings this civil
22 action under the *qui tam* provisions, and alleges as follows:
23
24
25
26

27 ¹ Exhibit 1. Published 2/18/2005 ORDER ON SUBJECT MATTER JURISDICTION (31 U.S.C. §
28 3732(b)) Case No. SA CV 00-1216-GLT [ES]. See first paragraph "The Court holds, on
apparent first impression, "the same transaction or occurrence" jurisdiction requirement
of the federal False Claims Act (31 U.S.C. § 3732(b)) is broad enough to include a system
or scheme of false claims".

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this Complaint pursuant to the False Claims Act, 31 U.S.C. 3729 et seq., 28 U.S.C. § 1345 and 31 U.S.C. §§ 3732(a) and 3730(h). The Court has personal jurisdiction over the Defendants because the Defendants reside and/or transact business in Hemet, Riverside County, California. Relator also invokes this Court's ancillary jurisdiction over pendent state claims arising out of the same operant facts.
3. Venue in this District is proper pursuant to 28 U.S.C. § 1345 and 31 U.S.C. § 3732 (a). Section 3732(a) of the Act provides that any action under section 3730 may be brought in any judicial district in which the Defendant or, in the case of multiple Defendants, any one Defendant can be found, resides, transacts business, or in which any act proscribed by section 3730 occurred. The acts and violations complained of herein occurred in Riverside County, California where Defendants resided and/or transacted business.
4. The Act allows any person having information regarding a false or fraudulent claim against the Government to bring an action for himself (the "Relator") and for the Government and to share in any recovery. Under the Act, this complaint is said to be filed in camera and remain under seal for a period of at least sixty (60) days and shall not be served on the Defendants until the Court so orders. The government may elect to intervene and proceed with the action within sixty (60)

1 days after it receives both the complaint and the material
2 evidence and information.

3 5. As required under False Claims Act, 31 U.S.C. Section 3730
4 (b) (2), Relator shall provide to the Attorney General of the
5 United States and to the United States Attorney for the
6 Central District of California shortly after the filing of
7 this complaint, a statement of all material evidence and
8 information related to the complaint. This disclosure
9 statement supports the existence of false claims by the
10 Defendant.
11

12 6. This action is not based upon any public disclosure of
13 information within the meaning of 31 U.S.C. § 3730(e) (4) (A).
14 The Relator has direct and independent knowledge, within the
15 meaning of 31 U.S.C. § 3730(e) (4) (B) of the information on
16 which the allegations set forth in this Complaint are based.
17

18 7. Relator has voluntarily provided this information to the
19 government prior to filing this Complaint to the extent any of
20 these allegations may have been publicly disclosed within the
21 meaning of 31 U.S.C. § 3730.
22

23 8. Based on those provisions, Relator seeks to recover damages
24 and civil penalties arising from Defendants' retaliation
25 against Relator and for the design, manufacturing, and sales
26 to Defendants' clients knowingly defective and "fraud
27 enhanced" large water meters. One such example of Defendants'
28 clients is Eastern Municipal Water District (EMWD) which uses

1 said meters to implement this court's Federally Adjudicated
 2 Water Allocations Rights for both the Soboba² and Pechanga³
 3 Tribal Water Rights Settlements. Federal funds were/and are
 4 being used to purchase said meters used by EMWD to monitor⁴
 5 these settlements.
 6

7 **9.** Relator seeks the court's jurisdiction to rule on the issue of
 8 "use of water meters that are defective, fraud enhanced, and
 9 not state law compliant being used to enforce Federal court
 10 mandated equitable water allocation rights".
 11

12 **10.** Plaintiff motions the court to rule that said meters need
 13 to conform to state laws, codes, and regulations modeled on
 14 national standards when used to enforce Federal rulings
 15 regarding water allocation rights.
 16

17 **III. PARTIES**

18 **11.** Qui tam Relator CHARLES M. STOVALL was formerly employed
 19 by the Defendant McCrometer as a Senior Embedded Systems
 20 Engineer for 15 months and believes he was engaged in a
 21 protected activity as defined in the United States False
 22 Claims Act, 31 U.S.C. § 3729 *et seq.* and alleges as follows:
 23

24 ² Exhibit 2. Public Law 110-2971 which is cited as the "Soboba Band of Luiseño
 25 Indians Settlement Act"

26 ³ Exhibit 3. H.R. 4285 which is cited as the "Pechanga Band of Luiseño Indians
 27 Settlement Act" which references United States v. Fallbrook Public Utility
 District et al., Civ. 19 No. 3:51-CV-01247 (S.D.C.A.)

28 ⁴ Exhibit 4. EMWD Document Hemet/San Jacinto Water Management Area 2007 Annual
 Report, See Figure 23. which shows a McCrometer Meter being read by EMWD Employee
 for the Extraction Monitoring Program. See table 24 which shows allocations of
 base production rights which requires equitable metering by the court.

1 **12.** Relator further alleges that the employment relationship
2 that gave rise to the allegations set forth herein was entered
3 into in California, and that the subject of said employment
4 relationship was performed in the City of Hemet, County of
5 Riverside.

6
7 **13.** During the course of his employment with Defendants,
8 Relator performed each and every condition and covenant
9 required on his part to be performed pursuant to said
10 employment agreement and in particular was continuously
11 employed by Defendant from on or about March 3, 2008, to on or
12 about May 6, 2009.

13
14 **14.** Defendants Doe 1 through Doe 10, inclusive, are sued
15 herein under fictitious names. Their true names and capacities
16 are unknown to Relator. When their true names and capacities
17 are ascertained, Relator will amend this complaint by
18 inserting their true names and capacities herein. Relator is
19 informed and believes and thereon alleges that each of the
20 fictitiously named Defendants is responsible in some manner
21 for the occurrences herein alleged, and that Relator's damages
22 as herein alleged were proximately caused by those Defendants.
23 Each reference in this complaint to "Defendant," "Defendants,"
24 or a specifically named Defendant refers also to all
25 Defendants sued under fictitious names.

26
27 **15.** Each reference in this complaint Relator is informed and
28 believes and alleges on the basis of that information and

1 belief, that Defendant MCCROMETER, INC. CORPORATION, a
2 Delaware Corporation and their parent corporation DANAHER
3 CORPORATION, a Delaware Corporation, (herein "MCCROMETER") is
4 a corporation doing business in the City of Hemet, County of
5 Riverside, State of California.
6

7 **16.** On Defendant's website they claim to be the "Best selling
8 Irrigation Meter in the U.S." Defendant's website also sites
9 significant utilization for it's mechanical and electronic
10 water meters in potable water, wastewater treatment and
11 management, water well production, marine system testing, fire
12 sprinkler testing, pumping stations, golf course and park
13 management, truck loading and discharge, canal laterals,
14 central pivot systems and leaching for environmental.
15

16 **17.** In addition the Defendant maintains two "Flow Calibration
17 Facilities", one in Hemet, CA and the other in Porterville,
18 CA.
19

20 **18.** Relator is informed and believes and thereon alleges that
21 at all times herein mentioned Defendants, and each of them,
22 were the agents, servants, and employees each of the other,
23 acting within the course and scope of said agency and
24 employment.
25

26 **19.** In 1991 Defendant DANAHER'S two major controlling
27 shareholders, Steven and Mitchell Rales, who now serve as
28 chairman of Danaher's board and chairman of its executive
committee, were convicted of Hart-Scott-Rodino Antitrust

1 Improvements Act of 1976 PREMERGER notification rules and
2 fined more than \$850,000 by the U.S. Department of Justice
3 working with the Federal Trade Commission⁵. The Department of
4 Justice working with the FTC only prosecuted 4 of 45 full-
5 phase investigations in 1991 with the Rales brothers being one
6 of the four brought to trial. The infamous Junk Bond King,
7 Michael Milken, was the brothers' financial backer⁶ and mentor.

8
9 **20.** Defendant DANAHER boasts they have delivered 25% per year
10 return to shareholders for more than 20 years. To quote an
11 article from Bloomberg Businessweek Magazine⁷
12

13 "But despite its low profile, Danaher is probably the
14 best-run conglomerate in America. It's clearly the best
15 performing: Over 20 years, it has returned a remarkable
16 25% to shareholders annually, far better than GE (16%),
17 Berkshire Hathaway (21%), or the Standard & Poor's 500-
18 stock index (12%)".
19

20 **21.** On May 4, 2009 Danaher shareholders⁸ challenged
21 Danaher/Kerr to phase out Mercury Tooth Fillings since there
22 are no safe amounts of mercury and they are the only company
23 manufacturing these fillings.
24

25
26 ⁵ Exhibit 5. Federal Trade Commission 1991 ANNUAL REPORT See p.4 line 15,16 and
p.67 bottom paragraph and top paragraph of p.68.

27 ⁶ Exhibit 6. New York Times, September 09,1988 by Michael Quint "MARKET PLACE;
Takeover stocks And Drexal Woes". See paragraph 4.

28 ⁷ Exhibit 7. February 19,2007 Bloomberg Businessweek "A Dynamo Called Danaher"

⁸ Exhibit 8. May 4, 2009 Danaher shareholders Challenge Danaher/Kerr to Phase Out
Mercury Tooth Fillings, Dominican Sisters of Hope, Others Question the Continuing
Use of Mercury in Fillings, Washington D.C.

IV. BACKGROUND INFORMATION AND GENERAL ALLEGATIONS

22. Relator is a former Senior Computer Hardware-Software Engineer that worked for Defendant McCrometer as Technical Lead on three major projects at the time of his constructive termination. McCrometer, Inc. designs, manufactures, calibrates and sells **water, oil, and gas** meters. Danaher, Inc. has owned McCrometer since 1996; in addition to over 60 other flow measurement companies around the world. Both companies sell to government entities and other purchasers nationwide that utilize said meters for fiscal metering.

23. Relator contends since 2004 Defendants have knowingly designed and sold large water meters (Totalizing Flow Meters (TFM)), example Model FC100/101 which is an electronic totalizing flow meter) which have designed-in "fraud features" that allow Defendants' customers to easily manipulate seven factory set calibration parameters⁹ leaving no audit trail. This is in violation of state water meter laws since doing so would invalidate the calibration and facilitate fraud.

24. In October 2008 Relator contends that Defendant coerced Relator in violation of Cal. Govt. Code § 12653(d)(2) to add more illegal software code to the FC100/101 to add a "Settable Totalizer" user interface feature that allows Defendants'

⁹ Exhibit 9. McCrometer Document FC101 Product Record showing factory-set flow measurement calibration values (parameters). The first three columns are changeable in the field thus violating the factory calibration.

clients to enter any value into the "Totalizer" desired.
 Relator contends that to the casual observer this is the same
 fraud as "Rolling back the Odometer on a car".

25. Relator contends that since 2000 Defendants and their
 clients have knowingly conspired to utilize said fraudulent
 meters on programs funded by both Federal and State government
 entities and others in violation of Federal and State(s) False
 Claims Acts.

26. Relator contends that he was in a protected activity
 under Federal and State laws and as stated on page 1 of
 Defendant's job description¹⁰ Essential Functions #10, 11 & 15.
*"10) Ensures design compliance with applicable standards and
 codes*
*11) Ensures reliability of electronic circuits in specified
 operating environments.*
*15) Investigates production/quality problems providing short
 and long term solutions"*

27. Relator contends that on May 5 & 6, 2009 he reported
 fraudulent activities^{11, 12} pursuant to learned company policy
 (DANAHER STANDARDS OF CONDUCT) and that he was terminated in

¹⁰ Exhibit 10. McCrometer Document 2/11/2008 EMBEDDED SYSTEMS ENGINEER JOB DESCRIPTION,
 See "Essential Functions #10,11, & 15" on page 1 of 2.

¹¹ Exhibit 11. McCrometer HR May 6, 2009 Notarized Voicemail regarding 5/6/2009
 meeting Issues on lines 4, 6 & 7.

¹² Exhibit 12. McCrometer Document May 22, 2009 SUBJECT: NOTICE OF POTENTIAL
 ELEGIBILITY lines 1-3.

1 retaliation in a constructive termination the next day in
2 substantive violation of public policy per the Federal and
3 State False Claims Acts.

4
5 **28.** Defendant's policy of requiring employees in California
6 to report suspected fraud to management, which is an approved
7 action federally, is not in California. California False
8 Claims Act requires an employee to disclose the alleged fraud
9 to a government or law enforcement agency and to prove that
10 the employer coerced the employee into engaging in the
11 fraudulent activity.

12
13 **29.** Defendant McCrometer admits in writing they do not have
14 any written evidence of Relator's alleged "verbal
15 resignation". See Exhibit 13 first sentence¹³. Relator denies
16 under oath¹⁴ he resigned but instead thought he had been fired
17 in retaliation for;

18 1) Since Relator had reported fraud to HR the day before,

19 2) Since Relator's work computer had been seized per company
20 custom upon firing an employee, and

21 3) Since Relator had told his supervisor, Robert Pinkerton the
22 day before he had been emailing back and forth with an ex-FBI
23 white collar crime investigator regarding fraud issues.

24
25 **30.** Relator continued to tell Defendant McCrometer about
26 fraudulent company practices immediately after his
27

28

¹³ Exhibit 13. McCrometer Document 5/8/2009 SUBJECT: TERMINATION OF EMPLOYMENT

constructive termination¹⁵, see lines 1 & 2 but was told on line 5 that his allegations were not specific enough even after a lengthy meeting in late May 2009.

31. In September 2010, Relator filed two formal complaints via certified mail with the appropriate California State authorities, California Department of Food and Agriculture, Division of Measurement Standards (DMS) using their complaint form¹⁶, ¹⁷. The only response Relator received was a phone call January 12, 2011 at 12:53 from Gary Castro from DMS. Gary stated that the "Settable Totalizer" was **obvious fraud** but his department did not have jurisdiction and Relator should contact the Department of Water Resources (DWR).

32. Relator had emails with DMS regarding jurisdiction¹⁸, ¹⁹. Relator has contacted DWR via phone and email but has not received a response.

¹⁴ Exhibit 14. Deposition of CHARLES MICHAEL STOVALL 12/10/2009 See page 61 lines 17, 18, 19, 20, 21, 22, 23 regarding fraud issues.

¹⁵ Exhibit 15. McCrometer Document 5/27/2009 SUBJECT: RESPONSE TO ALLEGED COMPANY FRAUD

¹⁶ Exhibit 16. CDFA/DMS Complaint FC100/101 Dated 8/30/2010.

¹⁷ Exhibit 17. CDFA/DMS Complaint RC50/51 Dated 8/30/2010.

¹⁸ Exhibit 18. 9-28-2010 Email From: Dan Reiswig To: Mike Stovall "I have found your documents sent to this office. DMS will review and inform you of the result as you have requested on the two Complaint Reports received." Complaint filed with the California Department of Agriculture, Division of Measurement Standards.

¹⁹ Exhibit 19. 8-25-2010 Emails From: Bill Tracy, Bill Tracy, Deputy Agricultural Commissioner/Sealer Riverside County RE: Jurisdiction? "Also is another agency such as the CPUC is not doing their job and allowing fraud to occur the DMS might get involved?", "Mike, You're right. It's a lengthy process getting everybody on the same page." "Water is another issue by itself governed by the water code. The CPUC may not have jurisdiction."

1 **V. DEFENDANT'S BUSINESS IMPOSES A SPECIAL POSITION OF PUBLIC TRUST**
2 **(U.S.S.G. § 3B1.3)**

3 **33.** Defendant manufactures water, oil, and gas fiscal
4 metering devices and systems used for large scale commerce
5 throughout the United States and Canada. In addition Defendant
6 provides calibration services for said fiscal meters requiring
7 periodic service.
8

9 **34.** Defendants are in a SPECIAL POSITION OF PUBLIC TRUST PER
10 U.S.S.G. § 3B1.3 as a manufacturer and as a Calibration
11 Service used for fiscal metering using special skills, as
12 Defendant states,
13

14 "They are the Flow Measurement Specialist".

15 **35.** DANAHER with its 60+ flow measurement companies should
16 have special skills.

17 **VI. SUMMARY OF "FRAUD FEATURES" DESIGNED INTO FC-100/101**
18 **ELECTRONIC WATER METER**

19 **36.** Relator alleges that the FC100/101 models currently in
20 production after said meters are installed the following
21 calibration parameters and totalizer value can be changed
22 quickly any number of times **without leaving an audit trail**
23 using a commonly known **universal password** or the factory set
24 password.
25

26 **37.** Access for programming the flow parameters is done using
27 a pair of magnets thus **leaving no fingerprints**.
28

1 **38.** In addition, if a remote monitoring computer (SCADA) is
2 connected to said meter, it also cannot detect these
3 parameters being changed during non-flow times.

4 ***The following flow volume parameters can be changed any time:***

- 5 1) The Displayed Volume Total can be changed to any value
6
7 2) The Gallons per Revolution can be changed to any value
8
9 3) The Calibration Percent can be changed plus or minus 10%
10 4) The Cut-off Level (minimum detected flow) can be set up to
11 eight digits
12 5) The totalizer and flow rate can be stopped using an
13 external input.
14 6) The Pulses per Revolution can be set to 1,2,4,8,10,12,24
15 7) The Displayed Volume Total can be reset to zero

16 **39.** These "designed-in-features" are all in violation of most
17 state water meter codes and regulations²⁰ which are modeled on
18 National Institute of Standards and Technology regulations as
19 specified in NIST Handbook 44.

20 **40.** All seven of these "fraud features" corrupt the factory
21 calibration and are not legal since they can be used to commit
22 fraud.
23
24
25
26
27
28

²⁰ Exhibit 20. Summary of State Laws and Regulations in Weights and Measures
(as of August 1, 2005)

VII. SUMMARY OF KNOWN PRODUCT DEFECTS WITH DEFENDANT'S SAID METERS

41. Listed in Table 1. are the McCrometer water meters and their known defects in violation (10+) of the statutes listed:

TABLE 1. DEFECTS v. VIOLATIONS

McCrometer Product	Design Defect	California Business and Professions Code Violation	National Institute of Standards Handbook 44, 2007 Regulations Violation
FC-100/101 Electronic Register FlowCom	Not Licensed	B&P 12500	
	1. Erratic Reading ²¹	B&P 12107	G-N.2, G-UR.1.2, G-UR.3.2
	2. Non-Responsive ²² , Not Reading, Lock-up ²³	B&P 12107 B&P 17500 B&P 6580	G.N.2, G-UR.1.2, G-UR.3.2
	3. Burnt Board calibration error	B&P 12107	G.N.2, G-UR.1.2
	4. Display error when total > 16.78 Million gal	B&P 12107	G-S.5.2.2(a)(b), G-T.1, G-UR.2
	5. Over-Rate rate and totalizer error PPS > 181hz	B&P 12107 B&P 17500	G-S.2, G-S.4, G-T.1
	6. No Audit Trail - lack of proper sealing - tamper proofing	B&P 12107	G-S.8, S.2.1
	7. Totalizer Rounding Down	B&P 12107	G-S.2, G-S.3(a), G-T.3, T.1, T.1.1

²¹ Exhibit 21. 9/2008 McCrometer Document FC-100/101 Defect Countermeasures/ Action Items

²² Exhibit 22. 6/3/2008 Email to Neb Petrovacki RE: Non-Responsive Unit Problem Resolution. Latch up problem requires field service call to open unit and pull battery and replace to get unit working again.

²³ Exhibit 23. 1/25/2009 Email: and attached compliance testing failure memo from HACH, Loveland, CO TO: Mike Stovall RE: HACH Flocom FC-100 Testing Failure Memo Compliance Tests See p. 2 for list of compliance failures.

	error with large totals		
	8. Flow Calibration Process	B&P 12107	G-S.2, G-S.3,N.3
	9. Non-volatile Memory error	B&P 12107	G-S.3(b), G-S.5.2.5, S.1.1.1
	10. Labeling	B&P 12107	G-S.1(d)
UltraMag™ Electromagnetic Water Meter	1. Totalizer Rounding Down error	B&P 12107	G-S.2, G-S.3.(a), G-T.3, T.1, T.1.1
Remote Wireless Well Monitoring System RemoteCONNECT™	1. Labeling	B&P 12107	G-S.1(d),
	2. No Audit Trail - lack of proper sealing - tamper proofing	B&P 12107	G-S.8, S.2.1
	3. Over-Rate rate and totalizer error	B&P 12107 B&P 17500	G-S.2, G-S.4,G-T.1
			47 CFR 15 FCC Statutes
Remote Wireless Well Monitoring System RemoteCONNECT™	1. FCC mandatory testing and labeling requirements	FCC part 15	Section 15.1, 15.201, Section 2.803 47 U.S.C. 302(b), Section 2.948, Section 2.1033, Section 2.938, Section 2.1033

VIII. MISLEADING CUSTOMERS ABOUT KNOW FLOWCOM DEFECTS

42. McCrometer is engaging in fraudulent business practices by publishing intentionally misleading product specifications and failing to notify existing customers of known product defects.

Table 2. McCrometer Electronic Register Specifications Summary

Model	Year	INPUT SIGNAL RANGE		ENVIRONMENTAL COMPLIANCE TESTING		
		Minimum	Maximum	EMI	ESD	RFI
CN04-2 ²⁵	2002	0.125 hz	3000 hz	YES	YES	YES
CN08-2 ²⁶	2007	0.125 hz	3000 hz	YES	YES	YES
TR-32-2 ²⁷	2002	0.125 hz	3000 hz	YES	YES	YES
TR29-2 ²⁸	2005	0.125 hz	3000 hz	YES	YES	YES
RE100 ²⁹	2005	0.125 hz	3000 hz	YES	YES	YES
RE200 ³⁰	2004	0.125 hz	3000 hz	?	?	?
EA401 ³¹	2005	?	10000 hz	?	?	?
FC100 ³²	2006	?	?	?	?	?

43. If one compares the troubleshooting sections of

McCrometer's RE-100 and FC-100/101 electronic registers User Manuals you notice that the RE-100 had the "Lock-up" issue mentioned 4 times. See exhibit 47 on p. 19. Then examine exhibit 50²⁴, the detailed user manual on pages 28-29. The user manual makes no mention of "Lock-up" which misleads the customers.

²⁴ Exhibit 50. McCrometer Document 24510-29.pdf FC100/101

²⁵ Exhibit 42. McCrometer Document 30116-05.pdf CN04-2

²⁶ Exhibit 43. McCrometer Document 30116-09.pdf CN08-2

²⁷ Exhibit 44. McCrometer Document 30116-27.pdf TR-32

1 **44.** The **INPUT SIGNAL RANGE** specified in the FC100/101³³ user
2 manual is not given. The specification only states:

3 *"INPUT COMPATIBILITY: McCrometer Flowmeters"*

4 The **ENVIRONMENTAL** specifications only specify temperature and
5 moisture rating (NEMA 4X), **no EMI, ESD or RFI ratings.**
6

7 **45.** The previous McCrometer electronic registers input ranges
8 were explicitly stated as either 3000 hertz or 10000 hertz.
9 Please compare the meter specifications in Table 2 above:
10

11 **46.** Why would the Defendant hide this information? The
12 problem is that it is typical for the larger water meters to
13 have a higher than 181 hz PPS. A typical booster pump is
14 specified to operate at 240 hz PPS. To see what happens when
15 the over-range problems occurs see the graph below:
16
17
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27 ²⁸ Exhibit 45. McCrometer Document 30119-42.pdf TR-29

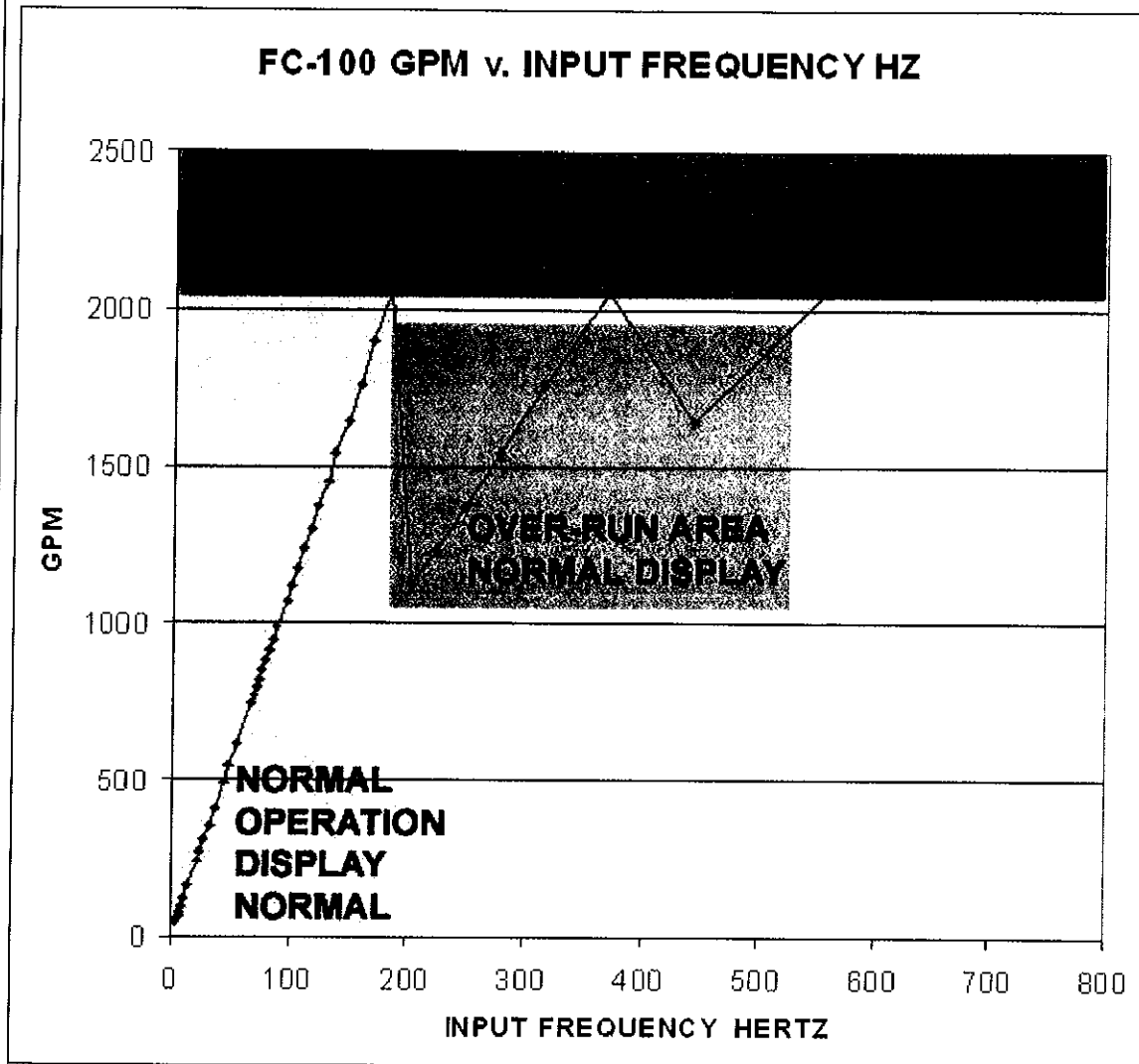
²⁹ Exhibit 46. McCrometer Document 24510-12.pdf RE200

³⁰ Exhibit 47. McCrometer Document 24508-86.pdf RE100

³¹ Exhibit 48. McCrometer Document 24510-12.pdf EA401

³² Exhibit 49. McCrometer Document 24510-49.pdf FC100/101

³³ Exhibit 50. McCrometer Document 24510-29.pdf FC100/01 USER MANUAL



47. In the graph above the area of fraud occurs (the pink area). The FC-100/101 display flashes when the GPM is above 2000.

48. Below 2000 the display does not flash and appears normal. If the input is increased to 205 hz the GPM reads the same as at 102 hz. The input can be increased to 450 hz and read the same GPM as at 150 hz.

49. Use of VFD pumps are encouraged and subsidized by power utility companies since they are far more power efficient.

1 Relator did not have time to fix this code problem and 100% of
 2 the Flowcom meters have this serious problem. Furthermore
 3 Relator noted that his supervisor, Robert Pinkerton, was
 4 responsible for commenting out the code that was suppose to
 5 **flash the display** if the input signal exceeded 181 hertz
 6 signaling the operator that a problem was happening.
 7

8 **50.** The 'C' Code below is from lines 130-138 in FC-100/101
 9 source code file output.c. This code was originally designed
 10 to flash the flowmeter flow rate display when the INPUT SIGNAL
 11 range is being exceeded and cannot be measure correctly. On 9-
 12 7-2007 Robert Pinkerton commented out the code that would
 13 check for over-range of the Input Signal.
 14

15 *//Commented out by RP on 9-7-07*

16 *// if(plsFreq>=180) // if (pulseInCnt > 1) by*
 17 *Ye Chun*

18 *// {*

19 *// blinkRate |= 0x01;*

20 *// plsFreq = 180;*

21 *// }*

22 *plsFreq = 0.0;*

23 **IX. DEFENDANT'S REQUIRED DUTIES OF RELATOR**

24
 25 **51.** One of Relator's specific duties was to design new
 26 electronic water meters and improve existing products,
 27 specifically the electronic water meter(s) the FC-100 and FC-
 28 101 which had been in production for at least four years.

1 **52.** The Relator also was expected by Defendant to have
2 significant relationships reporting to the Manager of Research
3 and Development, Robert Pinkerton, and have internal
4 relationships with the following: Engineering and Calibration
5 teams, Customer Service, Manufacturing Leadership teams, and
6 Senior Management teams.
7

8 **53.** Other significant relationships included external
9 relationships as follows: Outside testing facilities,
10 Customers, Vendors, and Consultants.
11

12 **54.** Defendant stated in McCrometer Human Resources form ESE-
13 2³⁴ that Relator PERFORMANCE MEASURES were as follows:

14 1) Develops clear plans for assigned projects and executes on
15 time with high level of accuracy and quality requiring
16 minimal/no rework.

17 2) Demonstrates effective communications of plans and
18 expectations to team/others. Includes appropriate people in
19 the decision making process.
20

21 3) Identifies project problems/challenges in a timely manner.
22 Develops and implements countermeasures for results; Involves
23 superiors and team members as appropriate.

24 4) Uses education, technology and/or process improvements
25 (DBS) to increase productivity and output quality.
26
27
28

³⁴ Exhibit 24. 2/11/2008 McCrometer HR Embedded Systems Engineer Job Description

**X. RELATOR'S SEVEN MAJOR ASSIGNMENTS BY DEFENDANT DURING
EMPLOYMENT**

(1) TECHNICAL LEAD ON EXISTING ELECTRONIC WATER METER FC-100/101

55. Relator was assigned as **Technical Lead** on Defendant's FC-100/101 Flowcom Electronic Water Meter Redesign and resolved 3 of the 4 hardware design problems Defendant asked him to resolve which Relator did in the first three months.

56. In and around October 2008 Defendant's customer, Wheeler Ridge-Maricopa Water Storage District, requested a new feature be added to the existing FC-100/101 menu of settable parameters. Relator's Manager, Robert Pinkerton, directed Relator to add a new "settable totalizer" feature allowing the customer to enter a starting total. Relator in the process of implementing the new feature discovered and resolved 3 more serious software problems³⁵ affecting accuracy and reliability of all FC-100/101 meters in the field, approximately 2000 units.

57. In and around November 2008 Defendant's Flow Lab Technicians, Jose Gomez and Lucy Colon, while testing the new "settable totalizer" software found a "round-down" error in the original flow total calculations utilized to calculate the totalizer value displayed on the meter. The "round-down" error would get progressively worse as the totalizer volume

³⁵ Exhibit 25. 11/2008 McCrometer FC-100/101 Defect Countermeasures/ Action Items Document See items 1,2,8 & 9.

1 increased such that it would eventually "stop" totalizing
2 (stop incrementing the totalizer) even though the flow rate
3 would be correct. Relator verified and resolved the serious
4 math problem in the code and the Flow Lab technicians verified
5 the solution was correct by running the same tests.
6

7 **58.** On December 15, 2008 Defendant started programming and
8 shipping said meters with Relator's software solutions which
9 stored total volume using integer math versus floating point
10 math solving the round down problem Jose and Lucy found in the
11 test lab.
12

13 **59.** Defendant's Assistant Product Manager for the FC-100/101,
14 Katie Engel, told Relator that prior to this time she had
15 tried to get Defendant, via eleven emails, to recall all FC-
16 100/101 and to "suspend" the product until all 4 problems
17 could be resolved.
18

19 **(2) TECHNICAL LEAD ON NEW REMOTE AGRICULTURAL WELL MONITORING**
20 **SYSTEM DESIGN**
21

22 **60.** Relator was assigned as **Technical Lead** on Defendant's new
23 Remote Agricultural Well Monitoring System³⁶ (called
24 RemoteCONNECT™). Relator completed design ahead of schedule
25

26 ³⁶ Exhibit 26. McCrometer Document 24511-58.pdf "Central Colorado Water
27 Conservation District Automates Water Well Flow Data With RemoteCONNECT Remote
28 Telemetry System" p.5 "Now Central plans to work with US Senator Mark Udall, US
Senator Michael Bennet and Congresswoman Betsy Markey to locate new funding
sources," says Randy Ray, CCWCD Subdistrict Operations Manager.

1 and factory production was setup and ready to produce at the
2 time of the constructive termination³⁷. As part of this new
3 design the Relator designed a new FlowCom (FC100/101) called
4 the FlowCom II³⁸ to resolve the remaining hardware problem and
5 used this new FlowCom II in the new RemoteCONNECT™ so as to
6 save costs and schedule.
7

8 **61.** This RemoteCONNECT™ system was the basis for a new
9 business unit in Defendant's company dedicated to wireless
10 monitoring with expected revenues of \$1.5M the first year
11 2009.
12

13 **(3) TECHNICAL LEAD ON NEW BATTERY POWERED ELECTROMAGNETIC WATER**
14 **METER DESIGN**
15

16 **62.** Relator was assigned as **Technical Lead**³⁹ on Defendant's
17 new Battery Powered Electromagnetic Water Meter for
18 Agricultural markets. This design would be Defendant's first
19 electromagnetic water meter product (called the 'converter-1')
20 designed in-house. Relator completed design ahead of schedule
21
22

23
24 ³⁷ Exhibit 27. McCrometer Document RemoteCOM Project Review See p.6 FCC Testing
Scheduled Feb. 5, 2009

25 ³⁸ Exhibit 28. CAD Rendering of EB-500 Energy Harvesting Mother Board with new
26 Flowcom II mounted on EB-500 circuit board

27 ³⁹ Exhibit 29. 7/18/2008 L & T Document MCM0781RS Converter-1 Requirement
28 Specification See p. 6 "2.3 Stakeholders Reference, Mike Stovall, Technical
Lead", Neb Petrovacki, Project Manager

1 and produced six completely working units for first article
2 test phase at the time of the constructive termination.

3 **63.** This new battery powered design was also designed to work
4 with the new RemoteCONNECT™ system Relator designed.
5

6
7 **(4) TECHNICAL SUPPORT FOR DEFENDANT'S FLOW CALIBRATION LAB TEAM**

8 **64.** Relator was assigned to attend regular senior technical
9 meetings with the Flow Calibration Lab team where he learned
10 of calibration testing issues with Defendant's water meters.
11

12 **(5) TECHNICAL SUPPORT FOR DEFENDANT'S TECHNICAL PHONE SUPPORT TEAM**

13 **65.** Relator was assigned to provide daily technical support
14 to the Defendant's technical phone support team.
15

16 **66.** During the last few months while Relator was employed he
17 spent a lot of time educating the technical support team, the
18 sales people and the local distributor McCall's Meters about
19 the round-down problem with the new "settable totalizer" when
20 totalizer values of greater than 16.78 million gallons being
21 entered.
22

23 **67.** Relator also learned of "round-down" problems with the
24 Defendant's "ULTRAMAG" magnetic water meter that the
25 Defendants manufacture. Relator learned that Defendant had no
26 design documents on the UltraMag and did not have access to
27 any code for the UltraMag and never has had such information.
28

(6) RELATOR ASSIGNED TO SUPPORT CUSTOMER PROBLEM SITES

68. Relator visited numerous Defendants' customer sites to troubleshoot Defendant's electronic water meters. Specific sites where Relator went were Rancho California Water District, San Bernardino Water District, Pico Rivera Water District, Santa Margarita Water District, Lost Hills Water District, and many more.

(7) RELATOR ASSIGNED TO SUPPORT FACTORY PRODUCTION TEAMS

69. Relator was assigned to provide daily technical support to the Defendant's factory test team.

VIII. DAMAGES

70. Relator would further show that treble damages for the false claims amount to tens of millions of dollars and that in excess of 2,000 of the said meters were sold and falsely certified and presented as being calibrated to government agencies.

71. Relator further estimates that total damages to the U.S. Government in damages and penalties are in the hundreds of million dollars.

72. Defendants are a "fiduciary" as such, "any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations or duties imposed upon fiduciaries shall be held liable to make good to such plan

1 resulting from such breach". Furthermore, based upon the
2 maximum statutory civil penalty of Ten Thousand Dollars
3 (\$10,000) for each false claim or statement submitted and
4 treble damages applied to the underpayments, Relator estimates
5 the total amount to be recovered from the Defendants to be in
6 excess of Twenty Million Dollars (\$20,000,000.00).
7

8 **73.** Note that agricultural irrigation utilizes 80-85% of the
9 water usage in the United States. Citing US Geological Survey,
10 the American Water Works Association said that "water loss
11 nationally at 6,000,000,000 gallons per day" for water loss
12 from unknown causes. The San Diego County Water District which
13 gets its imported water via EMWD and MWD states their losses
14 at 10% for a cost of \$28,000,000 per year.
15

16
17 **COUNT I DEFECTIVE PRODUCT FC100/101**
18

19 **74.** Relator adopts and reiterates all the facts alleged in
20 paragraphs 1 through 73, as fully and completely as if they
21 were incorporated herein verbatim. Relator would show the
22 following:

- 23 a) Defendants knowingly sold defective water meters to the
24 United States via various Federal Programs which violates the
25 Federal False Claims Act (31 U.S.C. §§ 3729 (a) (1) (A));
26 b) Treble damages are called for in 31 U.S.C. §§ 3729(a) (1) (G)
27 knowingly makes, uses, or causes to be made or used, a false
28 record or statement material to an obligation to pay or

1 transmit money or property to the Government, or knowingly
2 conceals or knowingly and improperly avoids or decreases an
3 obligation to pay or transmit money or property to the
4 Government, is liable to the United States Government for a
5 civil penalty of not less than \$5,000 and not more than
6 \$10,000, as adjusted by the Federal Civil Penalties Inflation
7 Adjustment Act of 1990 (28 U.S.C. 2461 ; Public Law 104-410),
8 plus 3 times the amount of damages which the Government
9 sustains because of the act of that person.

10 c) That the Defendants, through the acts of their officers,
11 agents, and/or employees made false statements to the United
12 States hiding serious design problems of said meters and their
13 refusal to follow statutes and regulations set by the
14 government.

15 d) That such statements caused direct financial impact or
16 damage to the Treasury of the United States for said defective
17 products paid for with funds from Federal Programs.

18
19
20 **COUNT II CONSPIRACY TO DEFRAUD FRAUDULENT PRODUCT FC100/101**

21 **75.** Relator adopts and reiterates all the facts alleged in
22 paragraphs 1 through 74, as fully and completely as if they
23 were incorporated herein verbatim. Relator would show the
24 following:

25
26 a) Defendants knowingly sold fraudulent water meters to the
27 United States via various Federal Programs which violates the
28 Federal False Claims Act (31 U.S.C. §§ 3729 (a)(1)(C));

1 b) That the Defendants knowingly designed into said meters
2 "fraud features" that allow Defendant's clients to facilitate
3 fraud against the government.

4 c) That the Defendants knew that such statements were false,
5 and that the Relator made the Defendants aware of the falsity
6 and illegality.

7 d) That such statements were intended to, and did conceal,
8 avoid, or decrease the obligation to pay or transmit money to
9 the Government; and
10

11 e) That such statements caused direct financial impact or
12 damage to the Treasury of the United States for said
13 fraudulent products paid for with funds from Federal Programs.
14

15 **COUNT III DEFECTIVE PRODUCT RemoteCONNECT™**
16

17 **76.** Relator adopts and reiterates all the facts alleged in
18 paragraphs 1 through 75, as fully and completely as if they
19 were incorporated herein verbatim. Relator would show the
20 following:
21

22 a) Defendants knowingly sold defective water meters to the
23 United States via various Federal Programs which violates the
24 Federal False Claims Act (31 U.S.C. §§ 3729 (a) (1) (A));

25 b) That the Defendants, through the acts of their officers,
26 agents, and/or employees made false statements to the United
27 States hiding serious design problems of said RemoteCONNECT
28

1 and their refusal to follow statutes and regulations set by
2 the government.

3 c) That the Defendants knew that such statements were false,
4 and that the Relator made the Defendants aware of the falsity
5 and illegality.

6 d) That such statements were intended to, and did conceal,
7 avoid, or decrease the obligation to pay or transmit money to
8 the Government; and

9 e) That such statements caused direct financial impact or
10 damage to the Treasury of the United States for said defective
11 products paid for with funds from Federal Programs.
12

13
14
15 **COUNT IV CONSPIRACY TO DEFRAUD FRAUDULENT PRODUCT RemoteCONNECT™**

16 **77.** Relator adopts and reiterates all the facts alleged in
17 paragraphs 1 through 76 as fully and completely as if they
18 were incorporated herein verbatim.

19 **78.** Relator would show Defendants knowingly sold said
20 fraudulent meters to their clients knowing that the
21 calibration parameters set in the factory could be changed
22 voiding said calibration and facilitate fraudulent claims in
23 violation of 31 U.S.C. § 3729 (a)(1)(C) for conspiracy to
24 defraud.
25

26 **79.** That in performing the foregoing acts, Defendants,
27 through the acts of their officers, agents, and/or employees,
28 knowingly or in deliberate ignorance of the truth or the

1 falsity of the information, conspired to defraud the
2 Government through the selling of a known fraudulent product
3 to their clients that use said meters, that is, a scheme or
4 process of false claims to the damage of the Treasury of the
5 United States.
6

7
8 **COUNT V CALIFORNIA FALSE CLAIM VIOLATIONS**

9 **80.** Relator adopts and reiterates all of the foregoing facts
10 alleged in paragraphs 1 through 79 as fully and completely as
11 if they were incorporated herein verbatim.
12

13 **81.** Defendants violated the California False Claims Act, Cal.
14 Gov't. Code §12653(d), by coercing Qui Tam Plaintiff to add
15 illegal software "settable totalizer" to FC100/101 product to
16 allow fraud.

17 **82.** Relator would show that in performing the foregoing acts,
18 Defendants violated the California False Claims Act, Cal.
19 Govt. Code section 12650 et seq., and in particular sections
20 12651 (a) (7) and (8).
21

22 **83.** These acts by Defendants have resulted in false claims
23 and Defendants have caused damage to the Treasury of the State
24 of California;
25

26 **COUNT VI RETALIATION AGAINST RELATOR CHARLES M. STOVALL IN
27 VIOLATION OF 31 U.S.C. 3730(H)**

28 **84.** Relator incorporates the allegations of Paragraphs 1
through 83 of this complaint, as though fully set forth

1 herein. During the entire time of Relator's employment with
2 Defendant he was engaged in protected conduct as that term is
3 defined in the False Claims Act, 31 U.S.C. §3730(h) *et seq.*

4 **85.** This Court has jurisdiction over this claim pursuant to
5 31 U.S.C. § 3730(h) and 3732(a), as well as through pendent
6 states claim jurisdiction.

7 **86.** Relator would show that Defendants in their acts and/or
8 practices subjected him to harassment, retaliation,
9 discrimination and public humiliation resulting in loss of
10 promotions and wages which actions continue to date.

11 **87.** During his employment with McCrometer, Relator learned of
12 the fraud perpetrated upon the Government by Defendants as
13 herein set out. On several occasions, he requested officers
14 and agents for Defendants to investigate, stop and report the
15 fraud to the government. Defendants not only failed and
16 refused, but also set about to obstruct Relator's further
17 efforts to gather information regarding all fraudulent
18 activities.

19 **88.** Defendants harassed and discriminated against Relator,
20 and undermined his credibility and personal and professional
21 integrity and competence in violation of § 3730(h).
22 Relator has been damaged⁴⁰ as a result of Defendant's
23 retaliation against him for his protected activities and
24

25 ⁴⁰ Exhibit 30. Dr. Curtis Evaluation and records p. 27 "temporarily totally"
26 disabled"

1 requests this Court to grant him such relief as is appropriate
2 under the provisions of § 3730(h).

3
4 **RELATOR'S "90 day PERFORMANCE AND FEEDBACK SUMMARY" BY DEFENDANT**

5
6 **89.** Relator knows and believes and alleges that he met
7 Defendant's job performance requirements with 6 out of 6
8 performance measures graded as "Meets Expectations" dated
9 6/27/2008⁴¹. Robert Pinkerton wrote on the third Objective
10 regarding "Results Achieved:

11 "Mike has shown a passion for delivering results. He has
12 been instrumental in defining several key FlowCom
13 improvements and has also assisted on the Converter and
14 RC projects."

15
16 **RELATOR'S "2008 PERFORMANCE APPRAISAL" BY DEFENDANT**

17
18 **90.** Relator knows and believes and alleges that he met
19 Defendant's job performance requirements for 2008 with 10 out
20 of 10 performance measures graded as "Meets Expectations" and
21 where he stated "I like my job" on the review dated 4/28/2009⁴²
22 just a week before his constructive termination.
23
24

25
26 ⁴¹ Exhibit 31. 4/29/2009 McCrometer HR 6/11/2008 90-Day Performance and
27 Development Feedback Summary

28 ⁴² Exhibit 32. 4/29/2009 McCrometer HR 2008 Performance Appraisal for MICHAEL
STOVALL

FIRST NEXUS TO CONSTRUCTIVE TERMINATION

91. In and around December 2008 Relator told Defendant's senior management team that 100% of the Defendant's FC-100 and FC-101 product in the field were defective and those approximately 2000 units should be recalled, the hardware fixed, and reprogrammed with the **corrected software especially since the totalizer value "round-down" errors got worse as the value in the totalizer got larger.**⁴³

92. Relator never again was invited to Defendant's Senior Management meetings. Defendant's agent Robert Pinkerton repeatedly yelled at Relator about bringing up the 100% defect issue after that incident.

SECOND NEXUS TO CONSTRUCTIVE TERMINATION

93. The RemoteCONNECT™ system designed by Relator was the Defendant's first wireless remote well monitoring system via satellite to connect a mechanical propeller water meter to an electronic water meter allowing the mechanical and electronic water meters to be compared on-site all the time as well as on a password protected website.

⁴³ Exhibit 33. 11/26/2008 Email to Katie Englin RE: FloCom fixes spreadsheet. Katie is informed that the Flowcom fixes spreadsheet has been updated.

1 **94.** In and around March 2009 Defendant's agent Scott McLeod,
2 Program Manager for the RemoteCONNECT™, asked Relator to
3 change the electronic water meter software to "blank-out" the
4 displayed "totalizer" value so farmers using the
5 RemoteCONNECT™ well monitoring system, would not be able to
6 compare the two totalizer values at the well site.
7

8 **95.** Relator refused to change the software as he felt this
9 was fraud and an opportunity to detect faulty mechanical
10 propeller meters as he knew occurred in McKinleyville, CA in
11 November 19, 2008⁴⁴.
12

13 **THIRD NEXUS TO CONSTRUCTIVE TERMINATION**

14 **96.** On or around February 2009 Relator also repeated
15 complaint to Defendant's agent Robert Pinkerton and the design
16 team of six engineers in India (at EmSys, a design company in
17 India) about the same math errors in the new converter-1 as in
18 the FC-100/101.
19

20 **FOURTH NEXUS TO CONSTRUCTIVE TERMINATION**

21 **97.** In and around May 1, 2009 Relator had received several
22 emails from Defendant's agent Robert Pinkerton requiring
23 Relator to shift and extend Relator's work hours without
24 additional pay because of problems with a vendor that supplied
25 additional pay because of problems with a vendor that supplied
26

27 ⁴⁴ Exhibit 34. 11/19/2008 Newspaper Article Times-Standard "McKinleyville may not
28 have to raise water rates after all". A McCrometer meter is 24% off and
 McCrometer blames a technician.

1 a website and satellite link used as part of the new
2 RemoteCONNECT™ system of 15 units being beta tested in
3 Building 5 at McCrometer.

4 **98.** The problem was with the vendor-supplied website used to
5 collect well pumping data from the 15 beta units under going
6 testing. The website included a button to cause a "real-time"
7 message to selected water meters connected via radio and
8 satellite. Defendant wanted to have a website button to
9 conduct a real-time data gathering event. This "Interrogate
10 Button"⁴⁵ caused the vendor satellite link to crash and
11 required physically resetting the power to the satellite link.
12 See the first page from the RemoteCONNECT Website user manual
13
14
15
16
17
18
19
20
21
22
23
24

25
26 ⁴⁵ Exhibit 35. May 4, 2009 3:34 PM Email FROM: Lenny Feuer TO: Scott McLeod RE:
27 Overflows "The meter is where the report would normally be initiated. So we have
28 no control over that part. It is also possible to interrogate data from the
server but via satellite that would not be advisable for all those
stations. We do have the ability to manually interrogate when needed but that is
a very slow process via satellite."

below.

2.0 Home Page

The Home page can be accessed by left clicking on the "Home" button on the top navigation bar (Number 1 below). From this page the data from any one station can be read. A station's data can be accessed by selecting a site (Number 2 below) then using the drop-down menu selection to select the station (Number 3 below), or by left-clicking on a station flag on the map (Number 4 below). When a station is selected, the data from the last reporting from that station is displayed in the right window (Number 5 below). Data represented in black text is current data, red text is data older than 35 minutes and blue text is data older than 24 hours. Select the proper time zone for accurate time reporting representation (Number 6 below).



IMPORTANT! DO NOT PRESS THE "INTERROGATE STATION" BUTTON. Doing so will lock-out the station from reporting data. (See Figure 2, #6) The station will report data on a preset time interval only.

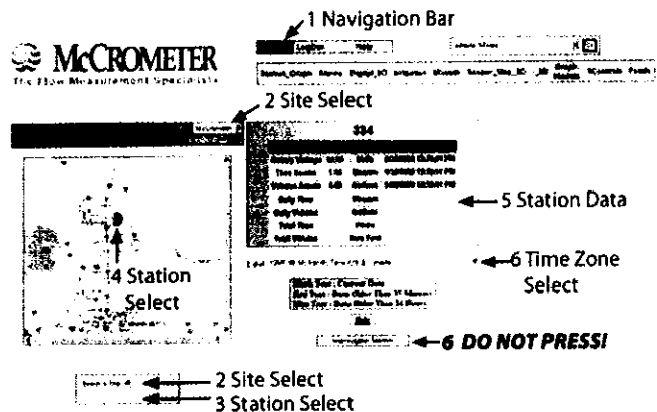


Figure 2: Home Screen



1



99. Relator repeatedly told his manager Robert Pinkerton that it was not possible to conduct "real-time" interrogation⁴⁶ of remote well sites using the selected satellite technology but he refused to listen.

100. The vendors own website stated its satellite technology could not be used with a large number of remote units which we were using 15 connected to one of the vendors' satellite link.

⁴⁶ Exhibit 36. McCrometer Document 30120-04 Rev. 1.0 RemoteCONNECT Website Manual See p.1 (5 of 18) "IMPORTANT! DO NOT PRESS THE "INTERROGATE STATION" BUTTON. Doing so will lock-out the station from reporting data. (See Figure 2, #6) The station will report data on a preset time interval only"

1 **101.** On or around May 4, 2009 Relator contacted the vendor of
2 the satellite link, Lenny Feuer, President of Automata, Inc.
3 via email⁴⁷ and phone and determined their satellite link was
4 not designed to receive signals from a website meaning it was
5 a "one-way" data link.

6
7 **102.** Lenny's admission of their satellite crashing problem via
8 email was emailed to Defendant's agent Robert Pinkerton.
9 Relator told Defendant's agent Robert Pinkerton via email he
10 should not have to work without pay since the vendor admitted
11 it was their problem.

12
13 **FIFTH NEXUS TO CONSTRUCTIVE TERMINATION**

14
15 **103.** On May 6, 2009 Relator told Robert Pinkerton about his
16 emails with an ex-FBI white collar crime investigator and
17 confronted him about the McKinleyville problem and the
18 "totalizer blanking request from Scott" and the company not
19 recalling defective products.

20 **104.** Defendant's agent Pinkerton then demanded that Relator go
21 with him to register a complaint with Defendant's Human
22
23
24

25
26 ⁴⁷ Exhibit 37. May 4, 2009 4:39 PM Email FROM: Scott McLeod TO: Mike Stovall RE:
27 Any Ideas? "According to Lenny, his system should never call for data. Our
28 systems should initiate the data transfer. I would then suspect that we should
 never listen for a poll, also, Lenny says that we should not use the interrogate
 button with satellite systems. The SATCOM was locked up again. Unit 2 is dead. It
 will not report out."

1 Resources Partner, Janene Moore. Pinkerton told Janene Moore
2 about Relator's refusal to work overtime without pay⁴⁸.

3 **105.** Relator told Janene that he was required by Danaher, Inc.
4 "Standards of Conduct" to first inform an immediate supervisor
5 and then to a Human Resources personnel of any "reasonable
6 suspicions" of fraudulent activities and then Danaher
7 Integrity hotline.
8

9 **106.** Relator told the Human Resources Partner he wanted to
10 report fraudulent activity and did so.

11 **107.** Relator stated he knew that Defendant's water meters were
12 used for fiscal metering and Defendant had a fiduciary
13 responsibility and duty to recall a product that had at least
14 seven known serious defects, four hardware design errors, and
15 three software design errors.
16

17 **108.** Relator informed Defendant that they were in violation of
18 numerous State and Federal statutes.

19 **109.** On May 6, 2009 after meeting with Defendant's agents
20 Robert Pinkerton and Janene Moore it was agreed that the
21 company took Relator's claims seriously and that the problems
22 would be addressed.
23

24 **110.** Relator was asked by Defendant's HR partner, Janene
25 Moore, to finish working the rest of the normal work day which
26

27 ⁴⁸ Exhibit 38. April 25, 2009 Emails FROM: Robert Pinkerton TO: Mike Stovall RE:
28 Remote Communications - work hours Robert states mandatory unpaid overtime is
required.

1 he agreed but Relator's manager Robert Pinkerton insisted that
2 Relator take off for the rest of the day. An agreement was
3 made that the "ISSUES" brought up in the meeting would be
4 looked into.

5
6 **111.** When Relator returned to work the next day at his normal
7 time 6:00 AM, he found his office computer gone and
8 immediately suspected the agreement from the day before had
9 been broken and that he had been fired as it was normal and
10 customary for Defendant to seize a fired employee's computer.
11 Two Engineers in the past few months had the same due process.

12
13 **112.** Relator told four or five of his fellow employees in
14 bldg. 1 & 5 good bye and told them he believed he had been
15 fired in retaliation for speaking up about fraud issues the
16 day before.

17
18 **113.** Relator was clearly distressed and gave his badge to the
19 Production Shop Manager Ivan Fuentes in bldg. 5 since no Human
20 Resources personnel were at work at the time.

21
22 **114.** Relator clearly told Defendant's bldg.5 Production Shop
23 Manager Ivan Fuentes that Relator was giving him his badge
24 since he believed he had been fired.

25
26 **115.** Relator told Defendant's agent Ivan Fuentes about all the
27 fraud issues Relator raised the day before and that he thought
28 he had a deal with HR to investigate the fraud issues brought
up.

1 **116.** Relator went home and only then he realized he had two
2 voicemails from Janene Moore from HR asking him not to come to
3 work that day as McCrometer management needed time to look
4 into the "issues"⁴⁹. Relator obtained notarized copies of the
5 Verizon voicemails.
6

7 **117.** Relator came back the next day to find out why he had
8 been fired only to find that the Human Resources Manager
9 ordered the facility's security guard to not let the Relator
10 onto company property. The security guard called Human
11 Resources Manager Phil Benthall who came out to the front gate
12 and told Relator that "He had quit" which Relator denied to
13 him. Phil Benthall stated "how dare you state that senior
14 management is allowing fraud" and he walked away.
15

16 **118.** Relator has been damaged as a result of Defendant's
17 retaliation against him for his protected activities and
18 requests this Court to grant him such relief as is appropriate
19 under the provisions of § 3730(h).
20
21
22
23

24
25 ⁴⁹ Exhibit 11. May 6, 2009 Voicemail Transcription FROM: Janene Moore in HR TO:
26 Mike Stovall "We are going to ask that you not come in tomorrow. We are looking
27 into some things that were brought up today and we are going to get Phil and
28 Melissa a chance to go over that information tomorrow so we will contact you
29 tomorrow once they are able to communicate further in regards to the issues that
30 were brought up today. Again we are going to ask you not come in tomorrow and if
31 you need to contact myself or Phil please do so, but if you could give me a call
32 back to confirm that you have received this message that would be great."

COUNT VII. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

119. Relator incorporates the allegations of Paragraphs 1 through 118 of this complaint, as though fully set forth herein.

120. On May 20, 2009 Relator receive a response ⁵⁰ from Janene Moore to schedule a meeting to review his employee records pursuant to California Labor Code 1198.5. Janene responded and Relator went to McCrometer and met with Janene Moore and Phil Benthall on or around May 27, 2009.

121. Relator told Phil and Janene that Relator had not voluntarily quit. Relator told them that Relator thought Relator had been fired since Relator's laptop had been seized May 6, 2009 and he knew it was company practice to seize computers of fired employees.

122. Relator asked them how many product defects do you need and for how long before recalling the known defective products? Relator told them Relator was instructed by Danaher Integrity Training to report fraud.

123. In addition the problem in McKinleyville, CA. and the flow lab calibration process problem were addressed. During the meeting Relator also requested my employee records and evaluations.

⁵⁰ Exhibit 39. May 20, 2009 McCrometer Letter to Charles Michael Stovall Re: Employer Response to Request to Review Personnel File

1 **124.** In violation of California Labor Code 1198.5 Relator was
2 not given his complete records. Relator was not given any
3 performance reviews or any notes about the May 6, 2009 meeting
4 with Janene Moore and Robert Pinkerton. Relator told Janene at
5 the meeting, you sent Relator a letter about the meeting we
6 had May 6, 2009 and you will not let Relator see the meeting
7 notes? Relator stated he had a copy of his performance review
8 and you will not let him look at the review! Relator told them
9 that Relator had not quit and Relator said Relator thought
10 Relator had been fired.

11
12
13 **MCCROMETER HR MANAGER THREATENS RELATOR**

14 **125.** In that meeting with Janene Moore, Phil Benthall asked
15 Relator if Relator have ever seen the movie the "Insider"
16 starring Russell Crowe. Relator said he had not and Phil told
17 Relator the story of the movie where the tobacco scientist's
18 life is ruined by Big Tobacco lawyers and the media. Phil
19 said, "Mike I don't want your life ruined." Relator took that
20 as a direct threat.

21
22 **126.** Phil Benthall further told Relator that
23
24 "Even if what you say is true, you are going to be
25 destroyed and McCrometer will just pay whatever fine and
26 we just keep on doing business."

27 **MCCROMETER HR HIRES LAW FIRM TO THREATEN RELATOR**
28

1 **127.** Relator was threatened by Ann Kotlarski of Seyfarth Shaw
2 LLP on July 6, 2009 ⁵¹ to take down information from Relator's
3 website www.mikestovall.com about the work he had done at
4 McCrometer. Relator removed all but one sentence about his
5 experience at McCrometer which looks like Relator did nothing
6 which damages Relator's future business.

8 **128.** Relator's website is used for displaying his engineering
9 design experience and recent designs. Ann Kotlarski demanded
10 Relator turn over his personal computers and all information
11 regarding McCrometer.

13 **McCROMETER HIRES PRIVATE INVESTIGATOR TO THREATEN**

14
15 **129.** On August 5, 2009 the Net Administrator at McCrometer,
16 Jeff Sausman, emailed me that he had heard a rumor that
17 McCrometer hired a private investigation firm to find any
18 collusion between me and one of the flow calibration
19 engineers, Rich Robinson. Rich is the other engineer who also
20 found the calibration lab problem.

21
22 **130.** To quote his email ⁵²:

23 *"Hey Mike,*

24 *I was dropping you a line for a few reasons. The first is*
25 *that I am sorry to see the way the company treated you.*

27
28 ⁵¹ Exhibit 40. July 6, 009 McCrometer Letter TO: Mike Stovall RE: McCrometer, Inc.
Cease and Desist Demand

⁵² Exhibit 41. 8/5/2009 Email from Jeff Sausman To: Mike Stovall RE: Hi Mike its
Jeff(Net admin) McCrometer

1 You where obviously a master at your trade, I'm sure all
2 will work out. Plus they had their heads too far up their
3 asses to see how dumb they are.

4 The second is that I heard a rumor that management is
5 hiring an investigative firm to look into Rich Robinsons
6 system to see if you are "colluding with each other.

7 I just wanted you to know because you don't deserve this
8 crap. I don't know why they would do this. From what I
9 have heard they are in the wrong side of a few laws with
10 how they are dealing with flowcom amongst other things.
11 I hope you are doing well and I hope to hear abut some of
12 those pertly awesome projects you do. I thought you where
13 a bad ass when 1 met you but after reading you resume I
14 was seriously underestimating you.
15 Have a good one. Let me know if you ever want to go out
16 for a beer."

17
18
19 **131.** These invasive and threatening actions are similar to
20 what the Tobacco Lawyers did to the whistle blowing tobacco
21 scientist, Russell Crowe, in the movie "The Insider" that Phil
22 Benthall, McCrometer HR Manager, threatened about.
23

24 **RemoteCONNECT PROJECT MANAGER APOLOGIZES**

25
26 **132.** On May 25, 2009 Scott McLeod left a voicemail for Relator
27 and stated:
28

1 "I just wanted to call and see how you are doing.

2 I just wanted to talk a bit.

3
4 I am getting ready to wind up my career at McCrometer and

5 I wanted to catch you before I took off.

6 I am going to give my notice tomorrow, I don't know yet.

7
8 Anyway, I hope things are going well for you.

9 **Sorry about all the garbage that went on.**

10 My number is 585-662-----. Bye bye." (Last 4 numbers

11 Redacted)

12
13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Relator Charles M. Stovall, acting on behalf of and in
16 the name of the United States, demands and prays that judgment be
17 entered in favor of the United States against Defendants as
18 follows:
19

20
21 1. For Count I, II, III and IV treble the amount of the United
22 States' damages, plus civil penalties of \$10,000 for each false
23 claim;

24 2. For all costs of this civil action, including attorneys'
25 fees and court costs;

26 3. For such other and further relief as the Court deems
27 equitable and just.
28

1 4. For double damages pursuant to U.S.S.G. § 3B1.3 where
2 Defendants are punished for using special skills to commit fraud
3 and in violating a special position of public trust. As Defendant
4 states,

5 "They are the Flow Measurement Specialist";
6

7
8 MOREOVER, RELATOR Charles M. Stovall, acting on behalf and in the
9 name of Plaintiff State California, in COUNT V, demands and prays
10 that an award be entered in favor of the Plaintiff State California
11 as follows:

12 1. For an appropriate and just multiple of the amount of the
13 respective Plaintiff States' damages plus civil penalties for each
14 false claim as permitted by the respective applicable law of
15 Plaintiff States;
16

17 2. For all costs of this civil action, including attorneys'
18 fees and court costs;

19 3. For such other and further relief as the Court deems
20 equitable and just.
21

22
23 MOREOVER, Relator Charles M. Stovall, acting on his own behalf,
24 demands and prays that an award be entered in his favor as follows:

25 1. That Relator on Counts I, II, III and IV as Qui Tam
26 Plaintiff in the actions on behalf of Plaintiff United States be
27 awarded the maximum amount allowed for Relator pursuant to the
28

1 respective laws of the United States with respect to False Claims
2 as herein cited and any other applicable provisions of law;

3 2. That Relator on Count V, as Qui Tam Plaintiff in the
4 actions on behalf of Plaintiff State be awarded the maximum amount
5 allowed for Relator pursuant to the respective laws of the
6 Plaintiff States with respect to False Claims Violations as herein
7 cited and any other applicable provisions of law; for an amount for
8 reasonable expenses incurred by the Relator in the prosecution of
9 this action; and for all reasonable attorney's fees and costs
10 incurred by the Relator;
11

12 3. That Relator in Count VI be awarded the maximum amount
13 allowed pursuant to § 3730(h) of the False Claims Act. Relief shall
14 include reinstatement with the same seniority status that employee,
15 contractor, or agent would have had but for the discrimination, Two
16 times the amount of back pay, interest on the back pay, and
17 compensation for any special damages sustained as a result of the
18 discrimination, including litigation costs and reasonable
19 attorneys' fees, an amount for reasonable expenses incurred by the
20 Relator in the prosecution of this action;
21

22 4. That Relator on Count VII such special damages as to which
23 the Relator may show him self justly entitled and as a deterrent to
24 others.
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff/Relator Charles M. Stovall demands that this case be
tried before a jury.

Dated: April 13, 2011



CHARLES MICHAEL STOVALL

Plaintiff, In Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13 day of APRIL, 2011, a copy of the foregoing Original Complaint was placed United States Mail, first class mail, postage prepaid, and addressed to:

Honorable Eric Holder
Attorney General of the United States
950 Pennsylvania Ave. NW, Room 4545
Washington, D.C. 20530-001

Andre Birotte Jr., Esq.
United States Attorney for the Central District
U.S. Attorney's Office
Central District of California
Suite 1200
312 N. Spring Street
Los Angeles, CA 90012

Leon Weidman, Esq.
Assistant United States Attorney
The United States Attorney's Office
Central District of California
Civil Division
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012

James J. Fletcher, Superintendent
United States of America
Department of the Interior
Bureau of Indian Affairs
1451 Research Park Drive, Suite 100
Riverside, California 92507-2154

Attorney General of California Kamala D. Harris
The Attorney General's Office
California Department of Justice
Attn: False Claims Unit
P.O. Box 944255
Sacramento, CA 94244-2550